

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FINISAR CORPORATION, a Delaware
corporation,

Plaintiff,

v.

U.S. BANK TRUST NATIONAL
ASSOCIATION, a national banking association,
not in its individual capacity, but solely in its
capacity as Indenture Trustee on behalf of all
Holders of Finisar Corporation's 5¼%
Convertible Subordinated Notes due 2008, 2½%
Convertible Senior Subordinated Notes due 2010,
and 2½% Convertible Subordinated Notes due
2010, and DOES 1 through 10, inclusive,

Defendants.

Case No. C 07-4052 JF (PVT)

**[PROPOSED] ORDER DENYING
FINISAR CORPORATION'S
MOTION: (1) TO COMPEL
PRODUCTION OF DOCUMENTS;
(2) TO COMPEL DEPOSITION
TESTIMONY; (3) FOR ADDITIONAL
TIME TO COMPLETE DEPOSITION;
AND (4) FOR MONETARY
DISCOVERY SANCTIONS**

Date: June 17, 2008
Time: 10:00 a.m.
Location: Courtroom 5, 4th Floor

Magistrate Patricia V. Trumbull

1 CURRENTLY PENDING before the Court are Plaintiff FINISAR CORPORATION'S
2 Motions: (1) to compel production of documents; (2) to compel deposition testimony; (3) for
3 additional time to complete depositions; and (4) for monetary discovery sanctions. The matters
4 came on regularly for hearing on June 17, 2008, at 10:00 a.m. in Courtroom 5 of the United States
5 District Court, Northern District of California, San Jose Division.

6 Finisar has not shown the required good cause to compel production of the four
7 documents and additional deposition testimony that Finisar seeks by its motion to compel. The
8 requested documents and information, which reflect communications among Defendant U.S.
9 Bank Trust National Association in its capacity as Indenture Trustee, its counsel, and Holders of
10 corporate debt securities issued by Finisar, are protected from discovery under the common
11 interest privilege. *See Lectrolam Custom Sys., Inc. v. Pleco Sales, Inc.*, 212 F.R.D. 567, 572
12 (E.D. Cal. 2002); *U.S. Bank Nat'l Ass'n v. U.S. Timberlands Kalamath Falls, L.L.C.*, 2005 WL
13 2037353 (Del. Ch. June 9, 2005). For these reasons, the motion to compel production and further
14 deposition testimony is denied, as is Finisar's motion for sanctions.

15 Based on the supporting and opposing memoranda and other related documents filed with
16 the Court in connection with these motions, the papers and records on file in this action, and other
17 matters of which the Court may properly take judicial notice, and good cause appearing,

18 IT IS ORDERED that Plaintiff's Motions are hereby DENIED.

19
20 DATED: _____

21
22 _____
23 Patricia V. Trumbull
24 United States Magistrate Judge
25
26
27
28